

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

3237 LIMITED PARTNERSHIP

Respondent

Case No.: I-00-70320

I-00-70177

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-70320) served by first-class mail, the Government charged Respondent 3237 L.P. with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondent violated § 700.3 on August 17, 2001 at 3237 Hiatt Place, N.W., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on September 19, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-70177) on September 26, 2001. On October 23, 2001, Respondent filed an untimely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension in any fines or statutory penalties.

As to the substance of the violation, Respondent explained that its property had a contract with the District of Columbia Department of Mental Health (“DMH”) to provide independent living apartments to DMH’s clients. One of the clients destroyed his apartment to such an extent that substantial renovation was required. It was during that renovation that Respondent’s contractor “did not use proper receptacles for the construction and residential debris removed from the apartment.” Respondent stated that its contractor was reprimanded and that the offending condition was immediately abated.

As to the untimely plea, Respondent stated that the Notices of Infraction were mailed to its lender/mortgage holder, and the first Notice of Infraction (00-70320) did not reach Respondent until well after the allotted time for a timely response had passed. Respondent also noted that it has a Resident Agent registered with the District of Columbia at 2120 16th Street, N.W., and an office on the first floor of the premises. No copy of the Notice of Infraction was received at either location, however.

By order dated October 30, 2001, this administrative court permitted the Government to respond to Respondent’s answer and plea. On November 2, 2001, the Government filed a response in opposition to Respondent’s request, stating, “the Government does not feel that a

suspension or reduction is suitable in this situation and the Government has the evidence that will provide the court with proof.” No other information was provided by the Government.

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 at 3237 Hiatt Place, N.W. on August 17, 2001.
2. On August 17, 2001, Respondent failed to store and containerize for collection solid wastes “in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.” 21 DCMR 700.3.
3. Respondent’s property had a contract with DMH to provide independent living apartments to DMH’s clients. One of the clients destroyed his apartment to such an extent that substantial renovation was required. It was during that renovation that Respondent’s contractor “did not use proper receptacles for the construction and residential debris removed from the apartment.”
4. Respondent’s contractor was reprimanded and that the offending condition was immediately abated.
5. Respondent has accepted responsibility for its unlawful conduct.
6. There is no evidence in the record of a past history of non-compliance by Respondent.

7. The Government mailed the Notices of Infraction to the lender/mortgage holder for the property, Midland Loan Services, Inc. The first Notice of Infraction (00-70320) did not reach Respondent until after the allotted time for a timely response had passed.
8. Respondent has a Resident Agent registered in the District of Columbia located at 2120 16th Street, N.W., and has an office on the first floor of the premises. The Government did not serve the Notices of Infraction upon either location.
9. Respondent has requested a reduction or suspension of any fines or statutory penalties. The Government opposes Respondent's request.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on August 17, 2001. A fine of 1,000 is authorized for a first offense of this regulation.² 16 DCMR §§ 3201.1(a)(1) and 3216.1(f). Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate.³ In light of Respondent's acceptance of responsibility, prompt

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

³ As noted previously, the Government has submitted a response opposing Respondent's request for a reduction or suspension of the authorized fine. The Government's response is conclusory and contains no representations that directly or indirectly address any of the potentially mitigating factors alleged by Respondent in its explanation. Accordingly, the Government's response can be given no weight in this administrative court's determination of the appropriateness of a reduction or suspension of the authorized fine in this case. *See* D.C. Official Code § 2-509(b) (prohibiting admission of evidence that is irrelevant or immaterial in administrative cases); *see also* Fed. R. Evid. 401 (defining relevant evidence).

efforts to comply with the regulation and the lack of evidence in the record of a past history of non-compliance, I will reduce the fine to \$500. *See* D.C. Official Code §§ 23-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

2. Respondent has also requested a reduction or suspension of the assessed statutory penalty. The Civil Infractions Act of 1985, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).
3. Under these facts, I find good cause for Respondent’s failure to timely answer the first Notice of Infraction. Respondent has asserted, without challenge by the Government, that the Government served the Notices of Infraction not upon Respondent, but upon Respondent’s lender/mortgage holder in Texas.⁴ By the time Respondent received the first Notice of Infraction from the lender/mortgage holder, the allotted twenty days in which to timely respond pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05 had elapsed. Respondent has further asserted, again unchallenged by the Government, that it maintains an office as well as a registered agent within the District of Columbia. There is nothing in the record to explain why the Government elected not to serve

⁴ Respondent’s lender/mortgage holder, Midland Loan Services, Inc., has not been named as a party to these proceedings.

Respondent at either of these locations. Accordingly, the statutory penalty assessed by this administrative court's order of September 19, 2001 shall be vacated.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that the statutory penalty assessed by this administrative court's order of September 19, 2001 is hereby **VACATED**; and it is further

ORDERED, that Respondent shall pay a fine in the amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant

to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge